

REMARKS

In claim 17, the insertion of the limitations, “an execution of a procedure” is to make explicit of what was already inherent in the claim. Also in claim 17, the limitation, “phase” has been replaced with “a variable...representative of a degree of completion of a cycle” for the purpose of clarifying what Applicant regards as the invention. Support for the amendment can be found as least on page 32-33 and Figure 9 of the application. Claims 50 and 59 have been amended to make explicit of what was already inherent in the claims. Claims 51 and 54 have been amended so that they conform with the language in the independent claim 50. Claim 85 has been amended to correct a typographical error. Claim 87 has been amended for the purpose of clarifying what Applicant regards as the invention. No new matter has been added.

I. ALLOWED CLAIMS

Applicant wishes to thank the Examiner for allowing claims 1-16 and 26-49.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claims 17-20, 50-59, and 80-95 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 17, 50, 59, 85, and 87 have been amended to remove any such alleged indefiniteness in these claims. As such, Applicant respectfully submits that the claim rejections under § 112 have been overcome.

III. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 17-20 and 87-95

Claims 17-20 and 87-95 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 3,952,201 issued to Hounsfield (Hounsfield).

Claim 17 recites physiological gating an execution of a procedure in an interval range based upon a variable, wherein the variable represents a degree of completion of a cycle of the physiological movement. Hounsfield does not disclose or suggest such limitation. Rather Hounsfield discloses gating an application of a radiation beam based on an amplitude of a heart motion. (Column 1, line 26, to Column 2, line 31; Column 3, line 66, to Column 4, line 7; and particularly Figures 2a-2c). As such, Hounsfield does not disclose or suggest gating an execution of a procedure based upon a variable that represents *a degree of completion of a cycle* of a physiological movement. For the foregoing reason, claim 17 is believed allowable over Hounsfield. For at least the same reason that claim 17 is allowable, claims 18-20, which depend from claim 17, are also believed allowable over Hounsfield.

Claim 87 recites collecting data samples representative of a physiological movement of a patient *due to breathing*. Hounsfield does not disclose or suggest such limitation. Rather, Hounsfield teaches a method for examining a living body based on monitoring a heart motion. (Column 1, line 53 to Column 2, line 2; Column 3, lines 1-12 and 27-34; and Column 3, line 66 to Column 4, line 7). Because Hounsfield specifically requires monitoring a heart motion, it in fact teaches away from collecting data representative of a physiological movement due to breathing. For the foregoing reason, claim 87 is believed allowable over Hounsfield. For at least the same reasons that claim 87 is allowable, claims 88-95, 108, and 109, which depend from claim 87, are also believed allowable over Hounsfield.

Claims 21-25

Claims 21-25 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,271,055 issued to Hsieh (Hsieh). Without acquiescence to the Examiner's reason for the rejection, claims 21-25 have been canceled, rendering the § 103 rejection with respect to these claims moot.

New claims 96-107

New claim 96 recites using *an optical device* to collect data samples representative of a physiological movement of a patient. Applicant respectfully submits that neither Hounsfield, Hsieh, or their combination discloses or suggests such limitation. As such claim 96 and its dependent claims 97-107 are believed allowable over the cited references.


CONCLUSION

Based on the foregoing, all remaining claims are believed allowable and a Notice of Allowance is respectfully requested. If the Examiner has any questions or comments regarding this amendment, the Examiner is respectfully requested to contact the undersigned at the number listed below.

Respectfully submitted,

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